

**REMARKS**

Claims 27, 28, and 30-34 are currently pending and under examination.

In the Final Office Action identified above, the Examiner rejected claims 27, 28, and 30-34 under 35 U.S.C. § 103(a) as being unpatentable over De La Moneda et al. (U.S. Patent No. 4,445,267, "De La Moneda") in view of Applicants' Admitted Prior Art (AAPR).

Applicants respectfully traverse the rejection of claims 27, 28, and 30-34 under 35 U.S.C. § 103(a) as being unpatentable over De La Moneda in view of AAPR. A *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006), p. 2100-125.

A *prima facie* case of obviousness has not been established because, among other things, the combination of De La Moneda and AAPR fails to teach or suggest each and every element of independent claim 27. Specifically, the cited references do not teach or suggest at least Applicants' claimed "first side wall...located at an end of

the first gate electrode" and "second side wall...located at an end of the second gate electrode," as recited in independent claim 27.

The Examiner states that "Applicants[]" are correct in identifying elements 14 and 15 as the first and second gates." See Final Office Action at page 6. However, Applicants cannot find any mention of such identification in their previous arguments or in their specification. Rather, Applicants' specification at page 5, lines 18-27, clearly discloses that element **14** in Fig. 3E is a **second gate insulator film**, on which element **15**, a **second gate electrode**, is formed. The second gate insulator film 14 formed under the second gate electrode 15 cannot be regarded as the claimed first gate electrode. Thus, the Examiner's statement of Applicants' "identifying elements 14 and 15 as the first and second gates" is incorrect.

The Examiner's subsequent characterization that the "first side wall is located at an end of the first gate electrode...as the side wall of 14 (at the right extreme of 14...)" and "second side wall is located at the end of the second gate electrode...as the sidewall of 15 above sidewall of 14 (at the right extreme of 15...)," at pages 6-7 of the Final Office Action, is also incorrect. Therefore, contrary to the Examiner's characterization, the sidewall of 15 and sidewall of 14 **cannot** correspond to the claimed "first side wall...located at an end of the first gate electrode" and "second side wall...located at an end of the second gate electrode," as recited in independent claim 27. Similarly, the device structure disclosed in prior art Fig. 3E does not teach or suggest that "a first side wall is located at an end of the first gate electrode in the first direction, a second side wall is located at an end of the second gate electrode in the first

direction,” and that “the first side wall is directly physically and without the presence of additional layers therebetween connected to the second side wall above the isolation element,” as recited in claim 27.

For at least these reasons, claim 27 is allowable over De La Moneda and AAPR, taken alone or in combination, and claims 28 and 30-34 are also allowable at least due to their dependence from claim 27. Accordingly, the rejection of claims 27, 28, and 30-34 under 35 U.S.C. § 103(a) as being unpatentable over De La Moneda and AAPR should be withdrawn.


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and timely allowance of the pending claims. The reasoning presented herein does not raise any new issues or necessitate the undertaking of any additional search of the art by the Examiner.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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